



in a boat or motor vehicle (and therefore not a crime of violence). See Shepard, 125 S.Ct. at 1257.

In Shepard, the Supreme Court held that:

enquiry under the ACCA to determine whether a plea of guilty to burglary defined by a nongeneric statute [such as the Massachusetts burglary statute] necessarily admitted elements of the generic [i.e. violent] offense is limited to the terms of the charging documents, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information.

Thus, in a case such as this one, where the charging documents do not indicate whether the burglaries at issue were crimes of violence, the Court should look to the judicial record for information contained in plea colloquies and the like.

The government has obtained the applications for the criminal complaint underlying the charges in several of the defendant's prior convictions. These indicate that the burglaries were into dwellings. However, in accordance with Shepard, such applications cannot be the basis for determining the appropriate sentence. With respect to three of the defendant's prior convictions, the Clerk of the Gardner District Court has informed the government that audio recordings of the plea colloquies are available. The government has requested copies of those recordings. According to the Clerk's Office, it may take until late August to provide such copies,

As calculated by the Probation Office, in the event that none of the defendant's prior convictions are deemed crimes of violence, his Guideline sentencing range is 33-41 months. Since the date on which the indictment in this case was returned, the defendant has been in state custody on unrelated charges. He will therefore get no credit for time served before sentencing in this case. For that reason, a 45-day delay will not prejudice the defendant.

In order to enable the Court to determine the appropriate sentence in this case based on as much information as is available, the government requests that sentencing be continued for approximately 45 days.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

/s/ John A. Capin

By:

\_\_\_\_\_  
JOHN A. CAPIN  
Assistant U.S. Attorney